

## AGREEMENT FOR SERVICES

This Agreement for Services (“Agreement”), dated as of \_\_\_\_\_ (“Effective Date”) is made and entered into by and between the County of Humboldt, a political subdivision of the State of California (“County”), and the Humboldt Lodging Alliance (“HLA”), Inc., a California non-profit mutual benefit corporation (“Contractor” or “HLA”), with reference to the following facts:

### Recitals

WHEREAS, the Property and Business Improvement Law of 1994 (California Streets and Highways Code section 36600 *et seq.*) authorizes cities and counties to establish property and business improvement districts for the purposes of promoting tourism;

WHEREAS, on March 13, 2012, the Board of Supervisors adopted Resolution No. 12-17 declaring its intention to establish the Humboldt County Tourism Business Improvement District (“HCTBID”) and to levy and collect assessments on lodging and businesses within the boundaries of the district as proposed in the Management District Plan (“MDP”);

WHEREAS, following public hearing on the resolution and recording of any protests by owners of lodging businesses, the Board of Supervisors on \_\_\_\_\_ passed Resolution \_\_\_\_\_ establishing the HCTBID;

WHEREAS, Contractor is designated in the Resolution creating the HCTBID as the initial contractor to be given responsibility for carrying out services, activities and programs promoting tourism in Humboldt County (“Services”) funded by assessments from within the HCTBID and as governed by the April 26, 2012, MDP; and

WHEREAS, Contractor was formed in accordance with the requirements of the Resolution and is willing to provide the Services on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, for consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### Agreement

**1. Administration of Agreement.** The County Administrative Officer or his/her designee is hereby designated to administer this agreement on behalf of County necessary for implementation of the provisions of this agreement.

**2. Contractor's Services.** Contractor agrees to perform the following services on behalf of County:

(1) Manage HCTBID funds in accordance with the April 26, 2012, MDP, attached hereto as Attachment 1 and incorporated by reference.

(2) Prepare and submit an annual report on activities pursuant to Streets and Highways Code section 36650.

**3. Cooperation with County.** Contractor shall cooperate with County and County staff in the performance of all work hereunder.

**4. Performance Standard.** Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Section 7; or (d) pursue any and all other remedies at law or in equity.

## **5. Payments.**

5.1 Sources. During the term of this Agreement, Contractor shall receive the following payments from County: All revenues received by County from assessments made pursuant to the Resolution ("Assessments"), less any costs associated with the creation of the HCTBID and less reimbursements and fees authorized by the MDP, which specifically provides that the County and each city shall be paid a fee equal to 1% of the amount of the assessment collected in their respective jurisdictions to cover their costs of collection and administration, and

5.2 Uses. Contractor shall use funds received pursuant to Section 5.1 only for purposes set forth in the MDP and authorized by, and subject to the terms and conditions of, the Resolution and this Agreement.

**6. Term of Agreement.** The term of this Agreement shall be from the Effective Date to five years thereafter, unless terminated earlier in accordance with the provisions of Section 7 below. Thereafter, this Agreement will be automatically renewed each year for successive one-year terms unless one party gives the other party written notice of non-renewal at least 30 days before the expiration of the then current term.

## **7. Termination.**

7.1 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may terminate this Agreement by giving Contractor written notice of

such termination, stating the reason for termination, if Contractor does not cure the reason given within 10 days of receiving the written notice.

7.2 Procedures Relating to Termination. If County terminates this Agreement pursuant to Section 7.1, or if the HLA is disestablished, or if the term of this Agreement expires, the following procedures shall apply. Contractor's obligations under this Section 7.2 are in addition to those contained in Section 10.8 of this Agreement.

7.2.1 Transfer of or Payment for Property. County and Contractor agree that all property (both tangible property and intangible property such as intellectual property) either (a) acquired by Contractor directly from County, or (b) acquired using funds provided by County pursuant to Section 5.1 of this Agreement, or (c) acquired by Contractor using funds provided by County prior to the term of this Agreement (the "Property") shall be used exclusively for the purposes set forth in the Resolution and Section 5.2 of this Agreement. No later than twenty (20) days before termination, expiration, or disestablishment, Contractor shall deliver to County a complete list of all Property. For each item of Property, Contractor shall, as designated by County at County's option, either (1) transfer title to and deliver the Property to County (or, if directed by County, to a successor contractor), or (2) pay to County the then-current fair market value of the Property. Contractor shall fully cooperate with County following termination, expiration, or disestablishment to ensure that all Property necessary to the continued operation of the tourism marketing program is transferred and delivered in a prompt and timely manner in order to minimize disruption to the tourism marketing program.

7.2.2 Assignment of Agreements. Contractor shall use its best efforts to ensure that all contracts, leases, and other agreements entered into between Contractor and third parties contain language allowing the contracts, leases, and other agreements to be assigned to the County or a successor contractor. No later than twenty (20) days before termination, expiration, or disestablishment, Contractor shall provide County with a list of all contracts, leases, and other agreements. Contractor shall assign to County or, if directed by County, to a successor contractor, any contract, lease, or other agreement designated by County.

7.2.3 Accounting. Within thirty (30) days of termination, expiration, or disestablishment, Contractor shall provide County with a complete accounting of all money and other financial assets (including, but not limited to, money market funds, notes, accounts payable, securities, claims, etc.) held by or for Contractor that (a) were acquired by Contractor directly from County, or (b) were acquired using funds provided by County pursuant to Section 5.1 of this Agreement (including assets constituting or acquired using the proceeds from the sale or disposition of Property or the proceeds from any agreement funded by Contractor using funds received from the County) (the "Financial Assets"), and shall transfer such Financial Assets to County.

7.2.4 Cooperation; Payment of Transition Costs. In the event of termination, expiration, or disestablishment, Contractor shall fully cooperate with County

in order to transfer the operation of the tourism marketing program to County or to a successor contractor in an orderly and expeditious manner. County shall pay the actual, reasonable costs and expenses incurred by Contractor in providing such cooperation following submission by Contractor of sufficient documentation establishing such costs and expenses.

**8. Indemnification.** Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to County, and to defend, indemnify, hold harmless, reimburse and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims arising from the formation and operation of the HCTBID. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including but not limited to County, and to defend, indemnify, hold harmless, reimburse and release County, its officers, agents, and employees, from and against any and all actions, claims, damages, disabilities, liabilities and expense including, but not limited to attorneys' fees and the cost of litigation incurred in the defense of claims as to which this indemnity applies or incurred in an action by County to enforce the indemnity provisions herein, whether arising from personal injury, property damage or economic loss of any type, that may be asserted by any person or entity, including Contractor, arising out of or in connection with the performance of Contractor hereunder, whether or not there is concurrent negligence on the part of County, but, to the extent required by law, excluding liability due to the sole or active negligence or due to the willful misconduct of County. If there is a possible obligation to indemnify, Contractor's duty to defend exists regardless of whether it is ultimately determined that there is not a duty to indemnify. County shall have the right to select its own legal counsel at the expense of Contractor, subject to Contractor's approval, which approval shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts. Contractor's obligations under this Section 8 shall not be paid or discharged using funds paid to Contractor by County under Section 5.1 or using funds derived from any assets or property acquired by Contractor using funds paid to Contractor by County under Section 5.1, except proceeds from any policy of insurance maintained by Contractor under Section 9. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by Contractor.

**9. Insurance.** With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, contractors, and other agents to maintain, insurance as described below:

9.1 Workers' Compensation Insurance. Workers' compensation insurance with statutory limits as required by the Labor Code of the State of California. Said policy shall be endorsed with the following language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days' prior written notice to the County of Humboldt, Risk Manager.

9.2 General Liability Insurance. Commercial general liability insurance covering bodily injury and property damage using an occurrence policy form, in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence. Said commercial general liability insurance policy shall either be endorsed with the following specific language or contain equivalent language in the policy:

a. The County of Humboldt, its officers and employees, is named as additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.

b. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

c. The insurance provided herein is primary coverage to the County of Humboldt with respect to any insurance or self-insurance programs maintained by the County.

d. This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Humboldt, Risk Manager.

9.3 Automobile Insurance. Automobile liability insurance covering bodily injury and property damage in an amount no less than Two Million Dollars (\$2,000,000.00) combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall be endorsed with the following language:

This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to the County of Humboldt, Risk Manager.

9.4 Documentation. The following documentation shall be submitted to the County of Humboldt, Risk Manager:

a. Properly executed Certificates of Insurance clearly evidencing all coverages, limits, and endorsements required above. Said Certificates shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current Certificates of Insurance evidencing the above-required coverages, limits, and endorsements on file with the County for the duration of this Agreement and assumes responsibility to automatically provide renewals without prior notification from County.

b. Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

c. Upon County's written request, certified copies of the insurance policies. Said policy copies shall be submitted within thirty (30) days of County's request.

d. After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

9.5 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9.6 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. County, in its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.

## **10. Representations of Contractor**

10.1 Standard of Care. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

10.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Section 7, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

10.3 Taxes. Contractor agrees to file federal and state tax returns and pay any applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to,

state and federal income and FICA taxes. Contractor agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish County with proof of payment of taxes on these earnings.

10.4 Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

10.5 Conflict of Interest. Contractor may not employ or subcontract with any person where such employment or subcontract would constitute a violation of California Government Code sections 1090 *et seq.*

10.6 Nondiscrimination. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, gender identity or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

10.7 Assignment of Rights. Contractor assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all work product, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all work product. Contractor shall have an exclusive right to use the work product during the term of this Agreement, but shall not permit another to use the work product without first obtaining written permission of County.

10.8 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, contractors, and other agents in connection with this Agreement shall be the property of County. County shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to County all such documents, which have not already been provided to County, in such form or format as County deems appropriate. Such documents shall be and will remain the property of County without restriction or limitation. Contractor shall have an exclusive right to use the documents during the term of this Agreement and may retain copies of the above described documents but agrees not

to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of County.

**11. Demand for Assurance.** Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Section 11 limits County's right to terminate this Agreement pursuant to Section 7.

**12. Assignment and Delegation.** Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

**13. Subcontracting.** The parties recognize that the Contractor shall enter into subcontracts for the administrative, professional and related services necessary for the implementation of the MDP. A subcontract will not relieve the Contractor from any liability or obligation under this Agreement and, as between County and Contractor, Contractor shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of Contractor. Contractor shall ensure that its subcontractors comply with all of the terms of this Agreement insofar as they apply to the subcontracted portion of the MDP. All references herein to duties and obligations of Contractor shall be deemed to pertain also to all subcontractors to the extent applicable. Each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the MDP.

**14. Method and Place of Giving Notice, Submitting Bills and Making Payments.** All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY: County Administrative Office  
825 Fifth Street, Room 112  
Eureka, CA 95501-1153



TO: CONTRACTOR: Humboldt Lodging Alliance, Inc.  
c/o Humboldt County Convention  
& Visitors Bureau  
1034 Second Street  
Eureka, CA 95501

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile, the notice bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail, (2) the sender has a written confirmation of the facsimile transmission, and (3) the facsimile is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

**15. Miscellaneous Provisions.**

15.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

15.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

15.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

15.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

15.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the laws of California. Any action to enforce the terms of this Agreement or for the breach thereof shall be litigated in the State of California and venue shall lie in the County of Humboldt.

15.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

15.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

15.8 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

15.9 Nuclear Free Humboldt County Ordinance Compliance. Contractor certifies by its signature below that Contractor is not a Nuclear Weapons Contractor, in that Contractor is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Contractor agrees to notify County immediately if it becomes a nuclear weapons contractor as defined above. County may immediately terminate this Agreement if it determines that the foregoing certification is false or if Contractor becomes a nuclear weapons contractor.

15.10 Open Meetings; Compliance with Ralph M. Brown Act. Actions of the Contractor shall be taken openly and deliberations shall be conducted openly in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), as made applicable to Contractor pursuant to Section 36614.5 of the Streets and Highways Code and this Agreement.

15.11 Public Access to District Related Records; Compliance with the California Public Records Act. Contractor shall comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management District Plan, contracts with third party providers and any other matter related to the District or the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

HUMBOLDT LODGING ALLIANCE, INC.

By: \_\_\_\_\_  
Board Chairperson

CERTIFICATES OF INSURANCE ON  
FILE WITH AND APPROVED AS TO  
SUBSTANCE BY DEPARTMENT:

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Risk Manager

APPROVED AS TO FORM:

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
County Counsel

DATED: \_\_\_\_\_

COUNTY OF HUMBOLDT

By: \_\_\_\_\_  
Chair, Board of Supervisors

DATED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the  
Board of Supervisors